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PASS TREASURY FOR ROSENBLOOM

E.O. 11652: N/A
TAGS: EFIN, OECD, NO
SUBJECT: NORWEGIAN AIDE MEMOIRE ON US-GON DOUBLE
TAXATION AGREEMENT

REF: (A) SECTO 7003; (B) PARIS 18821

SEPTTEL TRANSMITTED TEXT OF LETTER TO THE SECRETARY
FROM NORWEGIAN FOREIGN MINISTER FRYDENLUND CONCERNING
US-GON DOUBLE TAXATION CONVENTION. THERE FOLLOWS
TEXT OF AIDE MEMOIRE (DATED JUNE 12) REFERRED TO
IN THAT LETTER.

BEGIN TEXT

I. INTRODUCTION

THE NORWEGIAN GOVERNMENT IS OF THE OPINION THAT
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THE NORWEGIAN NATIONAL AND MUNICIPAL TAXES AS
ADMINISTERED UNDER THE ACT OF 13 JUNE 1975, NO. 35,
RELATING TO THE TAXATION OF SUBMARINE PETROLEUM
RESOURCES (HEREINAFTER REFERRED TO AS PTA 1975)
CONTINUE TO BE TAXES COVERED BY ARTICLE 1
(L) (B) (I) OF THE DOUBLE TAXATION
CONVENTION BETWEEN NORWAY AND THE UNITED STATES,

AND THAT THE SPECIAL TAX ADMINISTERED UNDER THE PTA 1975, SECTION 5, IS ALSO A CREDITABLE TAX UNDER ARTICLES 1 AND 23 OF THE CONVENTION.

THE PROVISIONS OF THE CONVENTION ITSELF RENDER THIS RESULT. UNDER THE CONVENTION, THE NORWEGIAN NATIONAL AND MUNICIPAL TAXES ARE EXPLICITLY CREDITABLE, AND SO ARE SUBSTANTIALLY SIMILAR TAXES IMPOSED IN ADDITION TO, OR IN PLACE OF, THOSE TAXES EXISTING AT THE DATE OF SIGNATURE OF THE CONVENTION.

THE NATIONAL AND MUNICIPAL TAXES REMAIN IN EFFECT, AS SPECIFIED BY PTA 1975. THE ADDITIONAL TAX ON PETROLEUM INTRODUCED IN 1975 IS, IN THE WORDS OF THE TREATY, "SUBSTANTIALLY SIMILAR" TO THE NATIONAL AND MUNICIPAL TAXES COVERED IN THE TREATY AND THEREFORE ALSO CREDITABLE.

FURTHERMORE, ALL OF THESE TAXES ARE LEVIED UPON GAINS WHICH ARE REALIZED IN THE UNITED STATES SENSE, AS THEIR PURPOSE IS TO REACH NET GAIN IN A MANNER WHICH IS STRUCTURED SO AS TO BE ALMOST CERTAIN OF DOING SO. THESE TAXES ARE IMPOSED UPON NET INCOME RATHER THAN UPON TRANSACTIONS. THEREFORE, THESE NORWEGIAN TAXES ARE THE SUBSTANTIAL EQUIVALENT OF AN INCOME TAX IN THE UNITED STATES SENSE.
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THE NORWEGIAN NATIONAL AND MUNICIPAL TAXES, BOTH BEFORE AND AFTER 1975, ARE INCOME TAXES IMPOSED ON NET INCOME INCLUDING INCOME FROM THE EXTRACTION OF PETROLEUM. INsofar AS THE NATIONAL AND MUNICIPAL INCOME TAXES ARE CONCERNED, PTA 1975 SIMPLY REFINED THE PROCESS BY WHICH NET INCOME IS TO BE CALCULATED. IN ADDITION, PTA 1975 IMPOSED AN ADDITIONAL AND THIRD TAX ON NET INCOME FROM THE EXTRACTION OF PETROLEUM.

IN RESPECT OF THIS PETROLEUM TAX, NET INCOME IS COMPUTED IN ESSENTIALLY THE SAME WAY AS IN RESPECT OF THE NATIONAL AND MUNICIPAL INCOME TAXES.

II. THE PURPOSE AND INTENT OF PTA 1975

IN THE PERIOD IMMEDIATELY PRECEDING THE ENACTMENT

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OF PTA 1975, WORLD PRICES FOR CRUDE OIL
ESCALATED DRAMATICALLY. AS A RESULT OF THESE HIGH
PRICES, GOVERNMENTS OF PRODUCING COUNTRIES, INCLUDING
THE GOVERNMENTS OF NORWAY AND THE UNITED STATES,
BECAME CONCERNED ABOUT THE EXTRAORDINARY PROFITS
BEING ATTAINED BY OIL COMPANIES. THE NORWEGIAN
GOVERNMENT ADDRESSED ITSELF TO THE PROBLEM BY
ENACTING THE SPECIAL TAX PROVISIONS OF PTA 1975.
THIS SPECIAL TAX WAS INTENDED TO TAX THE UNANTICIPATED
PROFITS WHICH RESULTED FROM THE HIGH PRICES.
IN ODELSTING PROPOSITION NO. 26, 1974-75 (HEREIN-
AFTER REFERRED TO AS "OT 26"), CONTAINING THE
GOVERNMENT'S PROPOSAL FOR CHANGES IN NORWAY'S
PETROLEUM TAXATION AND SUBMITTED TO THE STORTING
(PARLIAMENT) PRIOR TO THE ENACTMENT OF PTA 1975,
THE GOVERNMENT CONCLUDED THAT:

AS POINTED OUT IN CHAPTERS 2 AND 3, AN ENTIRELY NEW
PROFIT SITUATION HAS BEEN CREATED FOR OIL COMPANIES
OPERATING ON THE NORWEGIAN CONTINENTAL SHELF, AS A
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RESULT OF THE EXTRAORDINARY RISE IN PETROLEUM PRICES

WHICH HAS TAKEN PLACE SINCE 1972. IN THE
OPINION OF THE GOVERNMENT, A GREATER PART OF
THESE ADDITIONAL EARNINGS SHOULD ACCRUE TO THE NOR-
WEGIAN COMMUNITY THAN THE SHARE PROVIDED ON THE
BASIS OF CURRENT TAX RULES. IT MUST ALSO BE
TAKEN INTO CONSIDERATION THAT THIS RELATES TO INCOME
FROM THE EXPLOITATION OF NATURAL RESOURCES WHICH ARE
THE PROPERTY OF THE NORWEGIAN STATE. THE GOVERNMENT
THEREFORE PROPOSES THE INTRODUCTION OF A SPECIAL
TAX ON INCOME FROM PETROLEUM PRODUCTION AND PIPELINE
TRANSPORT. (OT 26, PAGE 35).

THE HIGHLY INTEGRATED NATURE OF THE OIL INDUSTRY
PRESENTED ANOTHER PROBLEM TO WHICH PTA 1975 ADDRESSED
ITSELF. THE NORWEGIAN GOVERNMENT WAS CONCERNED THAT
OIL COMPANIES, BECAUSE OF THEIR INTEGRATION,
MIGHT BE ABLE TO HIDE PROFITS ATTRIBUTABLE TO
THEIR NORWEGIAN OPERATIONS BY SALES AT UNREALISTIC
PRICES. PRIOR TO THE ENACTMENT OF PTA 1975, THE
NORWEGIAN TAX ACT OF 1911 PROVIDED FOR TAXATION BASED
UPON THE ACTUAL ANNUAL ACCOUNTS TAKEN FROM THE BOOKS
OF THE TAXPAYER. THIS REQUIRED THE GOVERNMENT
TO ACCEPT AS FACT THOSE PRICES RECORDED ON THE
BOOKS OF THE OIL COMPANIES. HOWEVER, SECTION 54 OF
THE GENERAL TAX LAW (HEREINAFTER REFERRED TO AS
"SEC. 54") ALLOWED THE TAX AUTHORITIES TO
IGNORE, IN CERTAIN CASES, THE RECORDED PRICES IF A
"COMMUNITY OF INTERESTS" COULD BE SHOWN TO HAVE
EXISTED BETWEEN THE TAXPAYER AND ANOTHER PARTY AND
HAVING AN EFFECT ON THE RECORDED SALES PRICES.
APPLICATION OF SEC. 54 TO THE SALES OF CRUDE OIL
WAS EXTREMELY DIFFICULT AND
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CUMBERSOME DUE TO THE NECESSITY OF EVALUATING ALL
OR A SERIES OF TRANSACTIONS IN SUCH AN EXTENSIVELY
INTEGRATED MULTINATIONAL INDUSTRY. THE GOVERNMENT
RECOGNIZED THESE PROBLEMS AND CONCLUDED:

BECAUSE OF THE WIDESPREAD INTEGRATION AND
CONCENTRATION IN THE PETROLEUM INDUSTRY, IT IS IN
PRACTICE VERY DIFFICULT AND OFTEN AN IMPOSSIBLE
TASK FOR THE ASSESSMENT AUTHORITIES TO OBTAIN THE
INFORMATION REQUIRED TO EVALUATE WHETHER SUCH COMMON
ECONOMIC INTERESTS EXIST. IT MAY BE CORRESPONDINGLY
DIFFICULT OR IMPOSSIBLE TO FORM A WELL-FOUNDED OPINION
AS TO WHAT EXTENT THE PRICES ARE FIXED DIFFERENTLY
THAN IF THE BUYER AND SELLER HAD BEEN INDEPENDENT
PARTIES. EVEN THOUGH IT IS IN ANY EVENT NECESSARY
FOR THE NORWEGIAN ADMINISTRATION TO DEVELOP AN

EXPERTISE IN THE FIELD OF PETROLEUM PRICING, IT WOULD BE AN IMPOSSIBLE ADMINISTRATIVE TASK TO EVALUATE EACH SALE WHERE THE PARTIES MIGHT HAVE COMMON ECONOMIC INTERESTS FOR THE PURPOSE OF POSSIBLY DISREGARDING THE REPORTED PRICES. (OT 26, PAGE 16.)

MOST OF THE CRUDE OIL IN INTERNATIONAL TRADE IS SOLD BETWEEN UNITS WITHIN THE INTEGRATED INTERNATIONAL OIL COMPANIES. A LARGE SHARE OF THE TRADE IN CRUDE OIL IS THUS NOT SUBJECT TO ORDINARY PRICE MECHANISMS IN THE MARKET. THE TRANSFER PRICES MAY BE INFLUENCED

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BY THE COMPANIES' INTERNATIONAL OBJECTIVES TAKING, FOR EXAMPLE, ACCOUNT OF THE DISTRIBUTION OF TAXABLE INCOME BETWEEN DIFFERENT COUNTRIES. (ID, PAGE 17).

TRANSACTIONS BETWEEN NON-ASSOCIATED COMPANIES MAY ALSO BE LINKED TO OTHER TRANSACTIONS, FOR EXAMPLE, A SALES AGREEMENT IN THE NORTH SEA AREA BETWEEN COMPANIES MAY BE TIED TO A SIMILAR AGREEMENT SOMEWHERE ELSE IN THE WORLD BETWEEN THE SAME COMPANIES (EXCHANGE TRANSACTIONS).

ING FREE OIL TRANSACTIONS. THESE SALES MAY BE RELATED TO HAPHAZARD SHORTAGES OR SURPLUSES AND THE PRICES MAY

THEREFORE VARY SHARPLY. (ID, PAGE 17.)

DUE TO THESE PROBLEMS, THE GOVERNMENT CONSIDERED IT NECESSARY TO ADOPT PROVISIONS RELATING TO THE SALE OF PETROLEUM BY MEANS OF WHICH THE NEED TO DETERMINE THE DEGREE OF "COMMUNITY OF INTEREST" REQUIRED UNDER SEC. 54, WOULD BE AVOIDED. THE METHOD CHOSEN WAS THE NORM PRICE SYSTEM WHICH WAS LIMITED OFFICIAL USE

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INTRODUCED BY PTA 1975. SINCE THE GOVERNMENT'S PRIMARY INTEREST IN PTA 1975 WAS TO ENSURE THAT NORWAY RECEIVED TAX REVENUES FROM CRUDE OIL SALES BASED ON INCOME PROPERLY ATTRIBUTABLE TO NORWEGIAN OPERATIONS, PTA 1975 PRESCRIBED THAT THE "NORM PRICE SHALL CORRESPOND TO THE PRICE WHICH COULD HAVE BEEN OBTAINED BY SALES BETWEEN INDEPENDENT PARTIES IN A FREE MARKET". AT NO TIME DID THE GOVERNMENT INTEND THAT THE NORM PRICE WOULD SET ARTIFICIALLY HIGH PRICES AS A METHOD OF OBTAINING ADDITIONAL TAX REVENUES.

WITH RESPECT TO THE SALE OF CRUDE OIL, THESE WERE THE REASONS WHY THE GOVERNMENT CONSIDERED IT NECESSARY TO ADOPT PROVISIONS WHICH MODIFIED THE REGULAR TAX PROCEDURES. HOWEVER, WITH RESPECT TO THE SALE OF GAS, THE CONTRACT PRICE IS BEING USED AS THE BASIS FOR TAXATION.

THIS IS
...BECAUSE NATURAL GAS IS LARGELY SOLD ON LONG TERM CONTRACTS BETWEEN INDEPENDENT PARTIES ...

IN ADDITION, A NATURAL GAS PRODUCER HAS LIMITED FREEDOM OF ACTION SINCE, AS A RULE, HE WILL BE DEPENDENT ON LANDING THROUGH PIPELINES AND AN EXISTING DISTRIBUTION SYSTEM AT THE LANDING SITE.
(ID, PAGE 19).

THE NORM PRICE SYSTEM WAS NOT INTENDED TO RESULT IN A BASIC CHANGE IN THE TAX SYSTEM OF NORWAY AND WAS THEREFORE CONSIDERED TO BE IN ACCORDANCE WITH DOUBLE-TAXATION CONVENTIONS NORWAY HAD WITH OTHER LIMITED OFFICIAL USE

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COUNTRIES. AS STATED IN OT 26 (PAGE 18):

IT SHOULD BE EMPHASIZED THAT IT IS NOT THE INTENTION OF THIS PROPOSAL TO CHANGE THE MAIN PRINCIPLE APPLIED AS A BASIS FOR VALUATION IN NORWAY'S GENERAL TAX LEGISLATION. NOR IS THERE ANY BREACH WITH THE PRINCIPLES APPLIED IN THE FORMULATION OF OUR DOUBLE-TAXATION CONVENTIONS WITH OTHER COUNTRIES.

III. THE APPLICATION OF PTA 1975, SECTION 4 -- NORM PRICE

THE PROVISIONS OF PTA 1975, SECTION 4, WERE IMPLEMENTED BY THE ROYAL DECREE OF 25 JUNE 1976, RELATING TO THE STIPLUATION OF NORM PRICES (HEREINAFTER REFERRED TO AS "RD 25 JUNE") AND THE ROYAL DECREE OF 17 DECEMBER 1976, RELATING TO THE USE OF NORM PRICE FOR TAX ASSESSMENT PURPOSES (HEREINAFTER REFERRED TO AS "RD 17 DEC."). THESE DECREES ESTABLISHED: A) THE METHOD AND PROCEDURE BY WHICH THE NORM PRICE WAS TO BE ARRIVED AT AND USED, B) THE POINT AT WHICH THE NORM PRICE WAS TO BE APPLIED; AND C) THE MEANS BY WHICH TAX-PAYERS' RIGHTS WERE TO BE

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PROTECTED.

A) METHOD AND PROCEDURE BY WHICH THE NORM PRICE IS
TO BE ARRIVED AT AND USED

INCOME FROM CRUDE OIL SALES FOR NATIONAL, MUNICIPAL
AND SPECIAL TAX PURPOSES IS TO BE DETERMINED BY THE
APPLICATION
OF THE NORM PRICE. (PTA 1975, SEC. 4.) UNLIKE THE
OPEC POSTED PRICE, THE NORWEGIAN NORM PRICE IS
SPECIFICALLY TIED TO MARKET PRICES RATHER THAN BEING
SET AT AN ARBITRARY LEVEL WHICH BEARS NO RELATION TO
ACTUAL SALES PRICES. THE PTA SPECIFICALLY REQUIRES
THAT THE NORM PRICE SHALL CORRESPOND TO THE PRICE AT
WHICH PETROLEUM COULD HAVE BEEN SOLD BETWEEN INDEPEND-
ENT PARTIES IN A FREE MARKET. (RD 25 JUNE, SECTION
2, COMMENTARY TO RD 17 DEC. I (A)). IN ORDER TO
ENSURE THAT THE PURPOSE OF THE ACT IS FULFILLED,
THE PTA SPECIFIES THAT A NUMBER OF FACTORS BE
USED IN DETERMINING THE NORM PRICE. AMONG FACTORS
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WHICH ARE TAKEN INTO ACCOUNT ARE REPORTED SALES
PRICES FOR NORWEGIAN CRUDE, LONG AND SHORT TERM SALES
CONTRACTS, REPORTED SPOT SALES, REPORTED PRICES FOR
COMPARABLE CRUDE, TRANSPORTATION COSTS, DELIVERY TIME,
PAYMENT TIME, PRICES FOR PETROLEUM PRODUCTS, SALES
BETWEEN RELATED PARTIES, AND SALES BETWEEN ASSOCIATED
PARTIES.

CONSEQUENTLY, THE APPLICATION OF ALL THESE FACTORS
HAS, IN PRACTICE, RESULTED IN NORM PRICES WHICH
CORRESPOND TO MARKET PRICES. THERE IS THEREFORE NO
INTENT TO TAX ARTIFICIAL INCOME AND, IN FACT, THE
APPLICATION OF THE NORM PRICE HAS NOT RESULTED IN
ANY TAX ON ARTIFICIAL INCOME.

MOREOVER, THE PROVISIONS OF THE NATIONAL, MUNICIPAL,
AND SPECIAL TAXES ALLOW FOR THE DEDUCTION OF ALL
EXPENSES INCURRED IN THE PRODUCTION OF INCOME
ATTRIBUTABLE TO NORWEGIAN OIL PRODUCTION ACTIVITIES.
IF NO NET INCOME IS REALIZED BY THE TAXPAYER AFTER
THE DEDUCTION OF THESE EXPENSES, NO TAX IS DUE.
THESE TAXES ARE THEREFORE CLEARLY STRUCTURED TO
REACH ONLY NET GAIN AND ACTUALLY REACH ONLY NET GAIN.

THE NORM PRICE IS DETERMINED SEPARATELY FOR
EACH QUARTER IN ARREARS IN ORDER TO ENSURE THAT THE
NORM PRICE IS ESTABLISHED AFTER ALL RELEVANT INFOR-
MATION REGARDING SALES IS KNOWN BY ALL PARTIES.
ADJUSTMENTS IN THE NORM PRICE ARE INTENDED TO, AND

HAVE IN PRACTICE PARALLELED THE ADJUSTMENTS IN THE
MARKET. IN ESTABLISHING THE NORM PRICE THE VIEWS
OF ALL AFFECTED COMPANIES ARE TAKEN INTO ACCOUNT
AND INFORMATION IS SOLICITED FROM THESE PARTIES
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AS ANOTHER METHOD OF ENSURING THAT THE NORM PRICE
CORRESPONDS AS CLOSELY AS POSSIBLE TO MARKET
PRICES.

B) THE POINT AT WHICH NORM PRICE IS APPLIED

THE DETERMINATION OF THE POINT AT WHICH NORM PRICE
SHOULD BE APPLIED RAISES COMPLEX PROBLEMS GIVEN
CERTAIN GEOGRAPHICAL ANOMALIES WHICH AFFECT
NORWEGIAN OIL PRODUCTION. DUE TO GEOGRAPHICAL FACTORS,
NO NORWEGIAN OIL IS ACTUALLY LANDED IN NORWAY.
(FOOTNOTE) BEGIN FOOTNOTE. OIL IS DISPOSED

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OF EITHER AT THE NORTH SEA PRODUCTION SITE IN SHIPS

OR AT THE END OF AN OIL PIPELINE AT TEESSIDE, ENGLAND.
AN AGREEMENT REGARDING THE LATTER HAS BEEN CONCLUDED
BETWEEN NORWAY AND THE UNITED KINGDOM (SEE AGREEMENT
BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY
AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND RELATING TO THE
TRANSMISSION OF PETROLEUM BY PIPELINE FROM THE
EKOFISK FIELD AND NEIGHBOURING AREAS TO
THE UNITED KINGDOM. SIGNED ON 22 MAY 1973). END
FOOTNOTE. THEREFORE, DETERMINING THE QUANTITIES OF
NORWEGIAN OIL DELIVERED TO BUYERS IS EXTREMELY DIFFICULT
AND FOR THIS REASON A SPECIFIC POINT OF REFERENCE
WAS REQUIRED.

THE GOVERNMENT WAS CONCERNED THAT ONLY INCOME FROM
NORWEGIAN SOURCES BE TAXED BY NORWAY. HOWEVER, THE
INTEGRATED NATURE OF THE OIL COMPANIES MADE IT
DIFFICULT TO DETERMINE THE POINT IN TIME AT WHICH
NORWEGIAN CRUDE WAS SOLD AND WHICH EXPENSES WERE
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ATTRIBUTABLE TO NORWEGIAN INCOME. THIS PROBLEM WAS
DEALT WITH IN THE ROYAL DECREE OF 17 DECEMBER 1976,
WHICH STATES, INTER ALIA:

A LARGE PORTION OF THE PETROLEUM PRODUCED ON
THE NORWEGIAN CONTINENTAL SHELF AND ALSO ELSEWHERE
IN THE WORLD, IS SOLD BETWEEN COMPANIES WITHIN THE SAME
GROUP OR BETWEEN INTERDEPENDENT PARTIES. OFTEN THE
PETROLEUM DOES NOT BECOME AN OBJECT
OF SALE ON THE OPEN MARKET UNTIL THE REFINED PRODUCT
IS SOLD, FOR EXAMPLE, FROM A PETROL STATION. HOWEVER,
TAX SETTLEMENT AND ASSESSMENT MUST TAKE PLACE AFTER
THE PETROLEUM IS PRODUCED, BUT BEFORE IT UNDERGOES
FURTHER PROCESSING. IT IS NECESSARY TO DETERMINE
AN INTERSECTING POINT AT WHICH THE PETROLEUM IS
VALUED AND WHERE, FOR TAX ASSESSMENT PURPOSES,
PETROLEUM PRODUCTION IS CONSIDERED TO END. EXPENDI-
TURE INCURRED BEFORE THE PRODUCT (PETROLEUM) PASSES
THIS INTERSECTING POINT WILL BE CONSIDERED AS PRODUCTION COSTS AND WILL ACCORDINGLY BE DEDUCTIBLE FOR
FOR THE ASSESSMENT OF PRODUCTION OPERATIONS.
EXPENDITURE INCURRED AFTER THAT POINT WILL BE
REGARDED AS HAVING BEEN INCURRED FOR OPERATIONS
OTHER THAN PRODUCTION AND MUST BE CHARGED TO THESE
OTHER OPERATIONS. ACCORDINGLY, SUCH EXPENDITURE
WILL NOT BE DEDUCTIBLE FROM PETROLEUM
PRODUCTION INCOME. TO ENSURE THAT THE SYSTEM IS
EFFECTIVE, IT HAS BEEN FOUND NECESSARY TO CONSIDER
THE PETROLEUM AS ENTERED TO INCOME AT THE NORM PRICE

WHEN IT PASSES THE SAID INTERSECTING POINT (THE NORM PRICE POINTS). THE PREDOMINANT GENERAL RULE WILL THUS BE THAT TAXATION BECOMES EFFECTIVE AT THE TIME WHEN THE PETROLEUM IS READY FOR SALE.
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UNDER THE CIRCUMSTANCES, THE DELIVERY POINT CONCEPT PROVIDES THE ONLY REALISTIC MEANS OF DETERMINING THE PLACE AT WHICH TAXATION SHOULD OCCUR. AS A PRACTICAL MATTER, THE DELIVERY POINT WAS ESTABLISHED AT THE ACTUAL SALES POINT OF MOST SALES. FOR NORM PRICE PURPOSES, THE DELIVERY POINT IS THE POINT WHERE THE OIL PASSES THE SHIP'S SIDE, WHETHER LOADED AT THE PRODUCTION SITE OR AT A PORT WHERE IT HAS BEEN LANDED BY PIPELINE. IN APPLYING THE NORM PRICE, BILL OF LADING QUANTITIES ARE USED AS THE BASIS FOR VERIFICATION OF SALES VOLUME.

C) LEGAL SAFEGUARDS UNDER PTA 1975

SIGNIFICANT LEGAL SAFEGUARDS AGAINST THE ARBITRARY DETERMINATION OF INCOME FORM AN IMPORTANT PART OF THE NORM PRICE SYSTEM. THE PROCEDURAL PROTECTIONS OF THE PUBLIC ADMINISTRATION ACT WERE MADE APPLICABLE. MOREOVER, A PETROLEUM PRICE BOARD WAS ESTABLISHED TO DETERMINE THE NORM PRICE. APPEALS AGAINST A DECISION OF THE PETROLEUM PRICE BOARD CAN BE LODGED WITH THE MINISTRY OF PETROLEUM AND ENERGY. (RD 25 JUNE, SECTION 5.) THE TAXPAYER MAY ALSO DEMAND AS PART OF THE APPEALS PROCEDURE, THAT A BOARD OF EXPERTS REVIEW THE NORM PRICE TO GIVE THEIR OPINION ON WHETHER THE PRICE APPEARS INEQUITABLE. (RD 25 JUNE, SECTION 5 (2).) THE FINAL NORM PRICE

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MAY BE CHALLENGED THROUGH THE COURT SYSTEM BY ANY
AFFECTED TAXPAYER.

IV. THE NATIONAL, MUNICIPAL AND SPECIAL
TAXES IMPOSED BY PTA 1975 ARE CREDITABLE TAXES

THE NORM PRICE SYSTEM, WHICH WAS MADE A PART OF THE
NATIONAL AND MUNICIPAL TAXES AND THE SPECIAL TAX
PURSUANT TO PTA 1975, WAS DEvised PRIMARILY AS
A METHOD BY WHICH THE GOVERNMENT COULD, WITHIN THE
LIMITATIONS IMPOSED BY ITS ADMINISTRATIVE CAPABILITIES,
ENSURE THAT ARTIFICIAL TRANSFER PRICES WERE NOT USED
BY THE OIL INDUSTRY TO TRANSFER PROFITS OUT OF NORWAY
WHICH WERE PROPERLY ATTRIBUTABLE TO NORWEGIAN SOURCE
INCOME. THE SYSTEM OF ESTABLISHING THE NORM PRICE,
COUPLED WITH ADMINISTRATIVE AND LEGAL SAFEGUARDS FOR
TAX-PAYERS WHICH FORM AN INTEGRAL PART OF
THE SYSTEM, ENSURE THAT THE NORM PRICE WILL NOT BE SET
AT A LEVEL OTHER THAN THE PRICE AT WHICH PETROLEUM
COULD HAVE BEEN SOLD BETWEEN INDEPENDENT PARTIES IN
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A FREE MARKET.

IT IS THE OPINION OF THE NORWEGIAN GOVERNMENT
THAT THESE GUARANTEES ENSURE THE PARTIES THAT THE
NORM PRICE SHALL CORRESPOND TO THE PRICE AT WHICH
PETROLEUM COULD HAVE BEEN SOLD BETWEEN INDEPENDENT
PARTIES IN A FREE MARKET AND THAT NORWAY'S INCOME
TAXES REACH ONLY PROFITS GENERATED IN NORWAY WHICH
ARE VIRTUALLY CERTAIN OF BEING REALIZED. THESE
INCOME TAXES ARE THE SUBSTANTIAL EQUIVALENT OF AN
INCOME TAX IN THE UNITED STATES SENSE AND ARE THEREFORE
CREDITABLE.

MOREOVER, THE NORWEGIAN GOVERNMENT IS OF THE OPINION THAT THE TAX CHANGES EMBODIED IN PTA 1975 MADE NO MATERIAL CHANGE IN THE BASIC TAX SYSTEM OF NORWAY AND ARE THEREFORE UNQUESTIONABLY WITHIN THE SCOPE OF THE DOUBLE-TAXATION CONVENTION BETWEEN NORWAY AND THE UNITED STATES. THE NORM PRICE SYSTEM (PTA, SEC. 4) WAS DESIGNED AND HAS BEEN ADMINISTERED TO ENSURE THAT COMPANIES ENGAGED IN PETROLEUM EXTRACTION IN NORWAY DO NOT ARTIFICIALLY TRANSFER PROFITS OUTSIDE NORWAY AND ARE SUBJECT TO TAX IN NORWAY ON NORWEGIAN SOURCE INCOME VIRTUALLY CERTAIN OF BEING REALIZED. THE NORM PRICE PROVISIONS ARE IN FACT BASED UPON THE SAME REASONS THAT HAVE LED TO THE PROVISIONS IN THE U.S. INTERNAL REVENUE CODE SEC. 482, EXCEPT THAT THEY ARE APPLIED IN A PREVENTIVE RATHER THAN IN A REMEDIAL FASHION. THE NORM PRICE SYSTEM HAS NOT ALTERED THE BASIC CHARACTER OF THE NATIONAL AND MUNICIPAL TAX; NOR HAS A DISSIMILAR TAX BEEN CREATED THROUGH THE SPECIAL TAX.

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CONCLUSION.

THE NORM PRICE SYSTEM EMBODIED IN THE PTA 1975 DOES NOT IMPLY TAXATION OF ARTIFICIAL INCOME. RATHER, IT IS THE PROPER EXERCISE BY THE NORWEGIAN GOVERNMENT OF ITS RIGHT TO ENSURE, WITH ADMINISTRATIVE SIMPLICITY, THAT INCOME IS NOT ARTIFICIALLY TRANSFERRED OUTSIDE ITS TAX JURISDICTION. THERE HAS BEEN NO ATTEMPT TO TAX NON-NORWEGIAN INCOME NOR HAS THERE BEEN ANY ATTEMPT TO ARTIFICIALLY INFLATE NORWAY'S TAX REVENUES. THE IMPACT OF THE PTA 1975 ON THE NATIONAL AND MUNICIPAL TAX BASE IS NOT OF SUCH A NATURE THAT THOSE TAXES HAVE BEEN ALTERED. THEY CONTINUE TO BE COVERED BY ART. 1 (1) (B) (I) OF THE CONVENTION. WITH RESPECT TO THE SPECIAL TAX, IT IS SUBSTANTIALLY SIMILAR TO NORWEGIAN INCOME TAXES ENUMERATED IN THE CONVENTION AND IS COVERED BY THAT CONVENTION UNDER THE PROVISIONS OF ART. 1 (2).

ANNEXES:

1. "LOVGIVNING VEDRORENDE DEN NORSKE KONTINENTAL-SOKKEL" ("LEGISLATION CONCERNING THE NORWEGIAN CONTINENTAL SHELF WITH UNOFFICIAL ENGLISH TRANSLATION"), ROYAL MINISTRY OF INDUSTRY AND HANDICRAFT.

2. "OT.PRP. NR. 26 (1974-75): ACT RELATING TO THE TAXATION OF SUBMARINE PETROLEUM DEPOSITS, ETC.

UNOFFICIAL TRANSLATION.", ROYAL MINISTRY OF FINANCE
AND CUSTOMS.

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Message Attributes

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Decaption Date: 01 jan 1960
Decaption Note:
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